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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,204	10/24/2000	Johan Sjolholm	104-290P	8411
2292	7590	01/14/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/622,204

Applicant(s)

SJOHOLM ET AL.

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-50 is/are pending in the application.
- 4a) Of the above claim(s) 14-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1761

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-43⁴⁵, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wild ('006) in view of Mead et al ('625), Ikeda et al ('979), Rutter et al ('374) and Wild ('107), further in view of Ostendorf ('487), Spiess ('491) and Toyoshima ('451) for the reasons fully and clearly detailed in the Office action mailed 4/19/04.

Claim 36 now positively recites that the duct means is sealed at a terminal edge which edge is capable of being removed and wherein the duct means is capable of being resealed. A translation of Wild ('006) is not present in the scanned, electronic version of the file so that it is not clear if the duct is sealed at the terminal edge. It appears from a rough, oral translation that the duct is at least closed; the examiner will once again attempt to obtain a translation of Wild ('006). Whether the duct is open or closed is, of course, an obvious function of how the refillable bag is to be marketed. That is, the bag can obviously be marketed empty and either sealed or open at the duct or the bag could be marketed filled in which case the duct would have to be sealed. Until a translation can be obtained, it will be assumed that the duct of Wild ('006) is not sealed. Whether the duct of Wild ('006) is sealed or not, since the bag is made of flexible film, the upper edge of the duct of Wild ('006) would be capable of being removed (any portion would be capable of being removed) and the duct of Wild ('006) would be capable of being sealed (since any film would be capable of being sealed). Thus, claim 36 differs from Wild ('006) (if it does) only in the recitation that the duct is sealed. As evidenced by Mead et al, Ikeda

and Rutter et al. it was well established to provide a duct in a bag with a seal. Not only do all three references teach providing a duct that is sealed, they also teach that the seal containing portion of the duct can be removed to create an opening in the duct (e.g. Mead et al and Ikeda) or it can be slit to create an opening (e.g. Rutter et al). Mead et al, Ikeda and Rutter et al also teach it was well established to provide a duct that is resealable. The art taken as a whole teach duct containing bags wherein at the time the duct is sealed, the bags can be empty (e.g. Mead et al and Rutter et al) or can contain contents (e.g. Ikeda et al). Thus, sealed duct bags are notoriously conventional.

To modify Wild ('006) and provide the duct containing bag with a sealed duct is therefore seen to have been an obvious matter of choice and an obvious function of how the bag is to be used, shipped and marketed (if indeed the bag of Wild does not already teach a closed duct). Note that Toyashima ('451) also teaches a sealed duct which is removed and resealable.

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 43 above, and further in view of Saito et al ('800) for the reasons given in the last Office action mailed 4/19/04.

Claims 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 36 above, and further in view of Buchanan ('286), Jensen et al ('607), and Aesbach et al ('129) for the reasons given in the last Office action mailed 4/19/04.

All of applicants remarks filed 9/20/04 have been fully and carefully considered but have not been found to be convincing.

The amendment requests that the rejection should further specify how the various teachings are combined. The Office action has been reviewed and has been found to fully and

clearly detail the rejections. Mead et al, Ikeda et al, Rutter et al, Wild ('007) and Toyoshina are all used in combination to evidence the fact that not only are applicants not the first to provide a bag with a sealed duct, but that this was a common and notoriously conventional expedient. See *In re Gorman* 18 USPQ 2nd 1886 wherein the Court noted that where teachings relied upon to show obviousness were repeated in a number of references, the conclusion of obviously is Strengthened. Of course, *In re Gorman* also restates the principal that patentability is not predicated on the number of references applied but rather what the art taken as a whole teaches.

To modify the duct containing bag of Wilde ('006) and provide a sealed duct for its art recognized and applicant's intended function would therefore have been obvious.

On page 16 of the amendment, it is urged that the interpretation of the claims in the last Office action was incorrect. It was not. The interpretation was correct for the claim language present at the time. With the current amendment, the claims now positively recite that the duct is sealed and this is how the claims have now been analyzed relative to the references.

The remainder of the amendment urges that the rejection does not show motivation. Thus urging is not convincing. The rejection is predicted on what the art taken as a whole teaches. The secondary art can teach both problem and solution. All of the structural elements recited are shown by the art taken as whole in the context of a bag and applicants are employing these conventional elements for the same reasons they are employed by the art taken as whole. For example, seals are used in duct containing bags whether the bags are empty or filled.

Finally, it is noted that there appears to be a misstatement on page 16 of the amendment. It is stated that since the cited references show a duct means with a seal which is capable of being removed when filling the container, and "it is now clear that this is not the present claimed

invention”, then the teachings of these references no longer apply. The present claimed invention is still directed to a duct means with a seal member which is capable of being removed. What is different - the fact that the claim no longer recites the condition of the interior of the container (i.e. empty or filled) at the time the seal is capable of being removed? If this is or is not the point being made, it is irrelevant and does not affect the application of the references since the claim is now silent as to the condition of the interior of the bag and when the seal is to be removed. That is, since the language, even functionally, is no longer recited, the references do not have to address this issue. The claims recite a duct containing bag with removable seal and so dose the art taken as a whole.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
January 5, 2005

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
1/15/05